United Nations A/53/364

General Assembly

Distr.: General
10 September 1998

Original: English

Fifty-third session
Item 113 (c) of the provisional agenda*
Human rights questions: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Myanmar, prepared by Rajsoomer Lallah, Special Rapporteur of the Commission on Human Rights, in accordance with Economic and Social Council decision 1998/261 of 30 July 1998.

* A/53/150.

98-27028 (E) 121098

Annex

Interim report on the situation of human rights in Myanmar prepared by the Special Rapporteur of the Commission on Human Rights in accordance with Economic and Social Council decision 1998/261 of 30 July 1998

Contents

		Paragraphs
I.	Introduction	1–3
II.	Methods of work	4–5
III.	The exercise of civil and political rights	6–32
	A. The impact of Myanmar law on human rights	6–9
	B. Rights pertaining to democratic governance	10–26
	C. Death in custody	27–32
IV.	Forced labour	33–49
V.	Minorities	50–54
VI.	Conclusions and recommendations	55–63
	A. Conclusions	55–59
	B. Recommendations	60–63

Page
3
3
4
4
4
8
10
11
12
12
13

I. Introduction

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar has been described in each of the Special Rapporteur's previous reports to the General Assembly[a] and to the Commission on Human Rights.[b] The mandate, initially articulated by the Commission in its resolution 1992/58 of 3 March 1992 and extended most recently in resolution 1998/63 of 21 April 1998 (approved by the Economic and Social Council in its decision 1998/26 of 30 July 1998), required the Special Rapporteur to establish or to continue direct contact with the Government and people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers, with a view to examining the situation of human rights in Myanmar and following any progress made towards the establishment of a constitution of democratic governance, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar.

2. In its resolution 1998/63, the Commission called upon the Government of Myanmar to cooperate fully and unreservedly with the relevant mechanisms of the Commission, in particular the Special Rapporteur, and to ensure his access to Myanmar, in order to establish direct contact with the Government and with any person in the country whom he might deem appropriate, to allow him fully to discharge his mandate; requested the Secretary-General to continue to give all necessary assistance to the Special Rapporteur to enable him to discharge his mandate fully and to pursue all efforts to ensure that the Special Rapporteur was authorized to visit Myanmar.

3. The main concerns of the international community with regard to the situation of human rights in Myanmar are referred to in the resolutions adopted by the various competent organs of the United Nations over the past six years, in particular, General Assembly resolution 52/137 and Commission resolution 1998/63, which are the most recent. The major concerns may be summarized, in substance, as follows:

(a) The electoral process initiated in Myanmar by the general elections of 27 May 1990 has yet to reach its conclusion, and the Government still has not implemented its commitments to take all necessary steps towards the establishment of a democratic order in the light of those elections;

(b) Many political leaders, in particular, elected representatives from the National League for Democracy (NLD), remain deprived of their liberty;

(c) Violations of human rights remain extremely serious, including, in particular, the practice of torture, summary and arbitrary executions, forced labour, including forced portering for the military, abuse of women, politically motivated arrests and detention, forced displacement, serious restrictions on the freedoms of expression and association, and the imposition of oppressive measures directed, in particular, at ethnic and religious minority groups;

(d) Forced relocation and other violations of the rights of persons belonging to minorities, resulting in a flow of refugees to neighbouring countries, and continuing attacks by the military on ethnic groups, resulting in death, destruction and displacement.

II. Methods of work

4. With a view to establishing direct contact with the Government and people of Myanmar, as requested by both the General Assembly and the Commission, the Special Rapporteur has written on several occasions to the Government of Myanmar seeking its cooperation and requesting its authorization to visit the country. The Government has on more than one occasion indicated that such a visit would be possible at an appropriate time, but so far no authorization has been forthcoming. In the absence of cooperation on the part of the Government, the Special Rapporteur has continued to rely on information from governmental, intergovernmental and non-governmental sources. He has also received several well-documented information from individuals connected in one way or another with the situation in Myanmar. He has further received several well-documented reports describing the situation in Myanmar, particularly in relation to the matters over which the General Assembly and the Commission on Human Rights have expressed serious concern. No less importantly, he has had direct contact with displaced persons along the Thailand/Myanmar border who have fled Myanmar and from whom he continues to receive information.

5. The present interim report is based upon information received by the Special Rapporteur up to 30 August 1998 and is to be read in conjunction with the Special Rapporteur's last report to the Commission on Human Rights (E/CN.4/1998/63).

III. The exercise of civil and political rights

A. The impact of Myanmar law on human rights

6. The Special Rapporteur has already commented on how, in Myanmar, several laws criminalize or adversely affect freedom of thought, information, expression, association and assembly through fear of arrest, imprisonment and other sanctions. The most commonly employed laws banning the enjoyment of civil and political rights and suppressing dissent against the regime have been the 1923 Official Secrets Act, the 1950 Emergency Provisions Act, the 1957 Unlawful Associations Act, the 1962 Printers' and Publishers' Registration Law, the 1975 State Protection Law (Law to Safeguard the State Against the Dangers of Destructive Elements) and Law No. 5/96 Protecting the Stable, Peaceful and Systematic Transfer of State Responsibility and the Successful Implementation of National Convention Tasks Free from Disruption and Opposition.

7. The 1950 Emergency Provisions Act allows the imprisonment for up to seven years of any person who either infringes upon the integrity, health, conduct and respect of State military organizations and government employees, spreads false news about the Government or disrupts the morality or behaviour of a group of people.

8. The 1975 Law to Safeguard the State Against the Dangers of Destructive Elements is also used by the regime to carry out indiscriminate and arbitrary arrests and detention of political opponents. Under this law, the Council of Ministers is authorized to pass an order, as may be necessary, restricting any fundamental right of a person if there are reasons to believe that any citizen has committed or is committing or is about to commit any act which infringes the sovereignty and security of the State or public peace and tranquillity. The same Law further provides for the detention to continue for a period not exceeding one year at a time up to a total of five years.

9. Further, numerous Executive Orders, criminalizing many aspects of normal civilian conduct, prescribing grossly disproportionate penalties and authorizing arrest and detention without judicial review, lead to the conclusion that a significant number of all arrests and detentions are arbitrary when measured by international standards. The examples below demonstrate the circumstances in which those laws continue to be used:

(a) In March 1998, the student leader Aung Tun, 30 years old, a Central Executive Committee member of the All Burma Federation of Students Unions, was sentenced to 15 years imprisonment for writing a history of the Burmese student movement. Arrested early in the year, he was charged under the 1962 Printing and Publishing Act and section 5(j) of the Emergency Provision Act 1950;

(b) In early April, Thakhin Ohn Myint, 80 years old, was sentenced to seven years prison for his part in assisting in the writing of the history of the student movement. He had been detained in February but was released in late March. However, he was rearrested the following day by military intelligence officers and was later sentenced;

(c) In April 1998, Daw San San was sentenced to 25 years imprisonment. She was arrested on 28 October 1997 after she had conducted an interview with the British Broadcasting Corporation on 26 June 1997, in which she had been critical of the military regime. She was arrested under section 10(a) of the 1975 State Protection Act, but in April she was charged under the 1923 Official Secrets Act and sentenced to 25 years. Daw San San, 58 years old, was initially detained along with seven members of Parliament from the NLD, including Dr. Than Nyein and Dr. May Win Myint. All were initially sentenced to six years imprisonment, but Daw San San's term of imprisonment was increased to 25 years after she refused to end her political activities. Daw San San had previously been arrested in November 1990 and had been sentenced to 20 years under Penal Code 122 for high treason. She was however, released on 1 May 1992 during an amnesty. Since that detention, the authorities dismissed her as a Member of Parliament and banned her from contesting any future elections.

B. Rights pertaining to democratic governance

10. Many reports indicate that in Myanmar political parties in opposition continue to be subject to intense and constant monitoring by the regime, aimed at restricting their activities and prohibiting members of political parties from leaving their localities. Existing orders from the State Law and Order Restoration Council (SLORC), including the 1961 Habitual Offenders Restrictions Act, preclude members of political parties from leaving their localities or their houses without prior permission from the authorities; otherwise they risk arrest and interrogation by the police or military intelligence agents.

11. The cases reported below have been brought to the attention of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights in Myanmar:

(a) A number of NLD elected representatives, including U Tun Win, Dr. Kyi Min, U Hlaing Aye, U Myint Aung, U Aung Soe, U Kyaw Myint, U Thein Kyi, U Than Naing, U Myint Thein, U Aung Myint Thein, U Tha Aung, U Aung San Myint, U Aung Naing and U Tar have been arrested or charged either under the Criminal Code or the Habitual Offenders Restriction Act. It is contended that the authorities have used the Act to restrict the activities of NLD-elected representatives in a number of the country's divisions, excluding Yangon Division. A restraining order has been issued against all elected NLD representatives, who are required to stay within the confines of their respective municipalities for a year. They are said to have to report to the local police stations at least twice a day. Ward authorities have been ordered to visit the home of a representative who reports sick to verify whether the claim is true. Those refusing to comply with the restraining order are threatened with arrest;

(b) As to the general background of implementation of these restraining orders, it is also contended that starting in the night of 25 June 1998, NLD-elected members of parliament in different parts of Myanmar, excluding Yangon, have been restrained by township judicial authorities who acted jointly with the police officials in those townships;

(c) In the initial stage, in Bago Division, military security personnel allegedly were involved in the implementation of the restraining orders; in the other states and divisions, only the township judges and the respective police station are said to have been involved. There has been a consistent pattern of NLD-elected representatives being taken to their respective police stations and being held there overnight – in some instances, for two nights. The NLD representatives would be allowed to take their own bedding, blankets and mosquito nets; the next morning (or morning thereafter), they would be released if two "guarantors" would post bond in the amount of 100,000 kyats each. The township judge would then read out an order based on the Emergency Powers Law, section 5, sub-section 1(f) and (g), under which the elected NLD representatives would be required to "sign in" at the local police station every day at 8 a.m. and 5 p.m. (in some instances, at 9 a.m. and 5 p.m.). This practice is said to have been designed to prevent the individuals thus restrained from travelling outside their town's jurisdiction. Non-compliance with the restraining order would entail a prison sentence of one year;

(d) It is contended that the NLD leadership has urged its elected representatives to defy the restraining orders and that, as a result, a number of arrests have been made by the authorities. The total number of restrictions in effect for the whole country now exceeds 50 elected NLD representatives. The exact number is unknown, since telephone connections to certain townships and places are said to have been disconnected.

12. There is no doubt that such practices, if true, would constitute a violation of basic international human rights norms, in particular, those proclaimed in articles 9 and 21 of the Universal Declaration of Human Rights.

13. On Thursday, 25 June, security forces prevented four elected NLD representatives and 40 young men from entering Daw Aung San Suu Kyi's compound for a regular "reading session". They were pushed back to the junction of Kabe Aye Sati Road and University Avenue. When they were informed of the incident, U Tin Oo, NLD Vice-Chairman, and Daw Aung San Suu Kyi went to the junction to lead the members back to her compound. After blocking them at various points, a man in civilian clothing ordered the security forces to attack the group. The police proceeded to do so, using batons and branches from trees which were lying on the roadside. A statement from NLD said that eight NLD youth members suffered injuries and Aung San Suu Kyi was also slightly injured. The location of the incident was a restricted area, thus no one else was present.

14. The Myanmar authorities, in a statement issued the day after, said the group had refused legitimate orders to leave "on security ground(s)" and that after the staging of a sit-down protest overnight, they had been allowed to enter. Officials had earlier denied that anyone was injured in the scuffle and said no arrests had been. The road to Aung San Suu Kyi's compound remained sealed off on Friday.

15. On Monday, 29 June, in an apparent response to these events, the Myanmar authorities threatened to take legal action against Aung San Suu Kyi and NLD. Commentaries run by three State-owned newspapers stated that the Myanmar Government and its people could no longer tolerate the acts of Aung San Suu Kyi, who ignored the interest of the nation and the people. The newspapers cited Law No. 5/96 which prohibits individuals or organizations from disturbing, destroying, obstructing, inciting, delivering speeches, making oral or written statements and disseminating in order to undermine, belittle and make people misunderstand the functions being carried out by the National Convention for the emergence of a firm and enduring Constitution. A conviction, under Law No. 5/96,

carries a minimum sentence of five years, with a maximum of 20 years imprisonment.

16. Faced with the gravity of the situation, the Special Rapporteur issued a press release in which he expressed his concerns, and on 8 July 1998, he sent a letter to the Minister for Foreign Affairs in order to seek clarifications. Relevant parts of the letter are reproduced here below.

> "I would like to express my concern following recent reports that members of the NLD continue to be subject to various forms of restrictions in the normal exercise of their civil and political activities, as should be the case for members of a legitimate and legally registered political party, as indeed for everyone. You will recall, in this regard, the observations I made in my reports to the General Assembly and to the Commission on Human Rights over the past two years in the light of the applicable international norms and the relevant resolutions of the General Assembly and the Commission, calling upon Myanmar to observe those norms.
>
> "According to information received, on the afternoon of 25 June 1998, while approaching Daw Aung San Suu Kyi's house, a group of around 30 NLD writers, journalists and activists were prevented by the security forces from attending a "reading session" regularly held at her home. When Daw Aung San Suu Kyi and U Tin Oo went out to escort the group into the compound, they were allegedly verbally abused and beaten by security forces. As a result four young men around Daw Aung San Suu Kyi were severely beaten, while she herself was slightly injured. In protest at the refusal to allow the group access to her compound, Daw Aung San Suu Kyi and U Tin Oo remained with the group, surrounded by security officers, throughout the night until they were finally allowed to enter her residence at 8 a.m. the following morning.
>
> "It has also been reported that a number of NLD members have been allegedly arrested throughout the country during May and June 1998. These include six NLD youth leaders, including Ko Tun Zaw Zaw, as well as Members of Parliament such as Mr. Mahn Johny from KyongPyaw township; David Hla Myint of Ngapudaw township and Dr. Tin Min Htut from Pantanaw township.
>
> "It has been further reported that, as of 25 June 1998, NLD-elected Members of Parliament in various parts of the country, excluding Yangon Division, are required to remain within their township jurisdiction and are required to present themselves twice a day to the nearest police station in order to report their presence by signing a declaration. Those who refuse to sign the declaration are allegedly immediately taken to custody without any inquiry or trial. Such was reportedly the case for more than 15 representatives elected from various constituencies.
>
> "In as much as all those reported to have been arrested were members of NLD, I take this opportunity to repeat my previous and continuing concerns about the fate of the over 80 NLD members and sympathizers who have been arrested since 1990 and who remain detained.
>
> "With respect to other NLD members, I urge your Government to ensure their personal integrity and freedom of expression, including the right to receive and impart information, freedom of association, assembly and movement.
>
> "In order to have an accurate and comprehensive view of the situation, I would greatly appreciate receiving information which your Government may wish to provide regarding the events and cases referred in the above paragraphs, both in respect of the facts themselves and the applicable legislation. I would also appreciate receiving a list of the names of any NLD-elected representatives arrested in Myanmar during the months of May and June 1998 as well as of those arrested since 1990.
>
> "I would further appreciate receiving any other details or observations which your Government deems pertinent."

17. The Special Rapporteur has noted that a reply, dated 10 August 1998, to the substance of his letter was sent, on behalf of the Permanent Representative of Myanmar to the United Nations at Geneva, to the Director of Activities and Programmes Branch of the Office of the United Nations High Commissioner for Human rights. It was not addressed to the Special Rapporteur nor did it make any reference to him. The Special Rapporteur regrets that the Government of Myanmar is deliberately ignoring his attempts to establish a constructive dialogue with the authorities in Myanmar, as requested by the General Assembly and the Commission on Human Rights.

18. On the substance of the reply, the Special Rapporteur notes that the Government of Myanmar did not provide the Special Rapporteur with a list of the names of NLD-elected representatives arrested in Myanmar during the months of May and June 1998 or of those arrested since 1990. Nor did the Government of Myanmar provide the texts of the

applicable legislation in force in the country which is used to justify the restrictions placed on the activities carried out by NLD.

19. Indeed, although the Special Rapporteur did not receive the official figures concerning the status of the NLD Members of Parliament elected in the 1990 elections, he has received several reports stating that the Election Commission has dismissed from Parliament all Members who have been charged with an offence and has banned others from running in future elections. After the election in 1990, the NLD had 392 of the 485 seats. Since the 1990 election, 112 Members of Parliament have apparently been forced from office or dismissed by the Election Commission. This represents more than a quarter, or 28 per cent, of the 392 NLD Members of Parliament who were elected under the NLD banner. Seventy-eight Members of Parliament – all from the NLD – have been jailed since the election and two (U Tin Maung Win and U Hla Than) have died in prison. At the moment, there are 42 NLD Members of Parliament who remain under detention in Myanmar for their political activities. Furthermore, as a result of threats and intimidation from the authorities, 20 opposition Members of Parliament, most of whom are from the NLD, have fled Myanmar.

20. It would appear that, given the refusal of the authorities to establish a genuine dialogue with the leadership of the NLD and the failure to convene the National Assembly, the NLD leadership has embarked on a campaign designated to achieve those ends by resorting to political actions in line with the normal exercise of basic civil and political rights. It would appear that the NLD had formally called the regime to convene the National Assembly by 21 August 1998 and had sought to exercise its right to conduct normal political activities by visiting members and sympathizers of the party outside Yangon.

21. On Tuesday, 7 July, Aung San Suu Kyi and Aung Shwe attempted to go to Min Hla township (147 km north of Yangon) to meet with a party member. They were stopped by the police 80 km from Yangon and ordered to return home. Aung San Suu Kyi and Aung Shwe refused and staged an overnight sit-in protest in her car at Shwe Mya Yar village. According to the authorities, the trip outside her home, without a customary security-forces escort, followed by her refusal to return home, amounted to a challenge to governmental authority amid a wider push to hasten civilian rule. The following day, however, the Government announced that it had allowed her to meet with the party member, Hla Hla Moe. Arrangements were made to bring Hla Hla Moe to Shwe Mya Yar to meet with the NLD leader on the morning of 8 July. After the meeting, both parties returned home.

22. On 24 July 1998, Daw Aung San Suu Kyi was stopped by local authorities about 51 miles (32 km) west of Yangon as she attempted to drive to Bassein, 100 miles (160 km) west of the capital, to meet members of her political party, the National League for Democracy. The authorities refused to let her proceed, and she refused to return to Yangon. As a result, Daw Aung San Suu Kyi spent five days stuck in a car on a rural highway surrounded by governmental security personnel. While Daw Aung San Suu Kyi and members of their party were staying near Anyarsu and Pandine villages because of the blockade, the authorities, on 30 July 1998, ordered the security forces to use force to remove them. The General Secretary was physically forced into a car and driven back to her home without her consent. The authorities also drove the car belonging to the General Secretary back to her home without her permission. The remaining Central Executive Committee member and two other members of the party were also forced into the cars of the authorities and driven back.

23. On 28 July 1998, the United Nations High Commissioner for Human Rights issued a press release expressing concern over reports of a standoff in Myanmar between the military and Aung San Suu Kyi and urging the Government of Myanmar to accept a visit of the Special Rapporteur to Myanmar. The press release reads as follows:

> "The reports coming from Myanmar regarding the refusal of the military authorities to allow Aung San Suu Kyi to travel freely give cause for great concern. The incident is the latest in what appears to be a developing pattern of restriction of the rights to freedom of movement and to freedom of association of Mrs. Suu Kyi and members of the National League for Democracy. According to the information received, Mrs. Suu Kyi is today spending the fifth day in her car after being stopped on the road while going to visit supporters of her party outside of Yangon. There are legitimate concerns about Mrs. Suu Kyi's health and her security during this standoff.
>
> "This incident provides stark evidence of the need for the Government to enter into a frank and sincere dialogue with civil society in Myanmar as a way of overcoming the political difficulties the country is facing.
>
> "I urge the Government of Myanmar to work with Mrs. Suu Kyi and her supporters to resolve the current standoff peacefully and quickly. I also call on the Government to guarantee the rights of freedom of movement and association of all citizens and to accelerate the process of national reconciliation

leading to the enjoyment of all human rights. I reiterate my recent request to the Government to facilitate a visit by the Commission on Human Rights Special Rapporteur for Myanmar, who has been seeking such a visit for a lengthy period."

24. On 12 August, in another attempt to travel outside her residence to meet members of her political party in the city of Pathein (Ayarwaddy Division), Daw Aung San Suu Kyi together, with U Hla Pe and a driver, were again stopped by the authorities at Anyarsu village, located 20 miles south-west of Yangon. After spending 12 days on the spot, Daw Aung San Suu Kyi and colleagues returned home without being able to reach Pathein and hold meetings with local NLD members.

25. The authorities of Myanmar, through "information sheets" received on a daily basis from the Office of the High Commissioner for Human Rights, recounted these events and justified the actions taken – i.e., not to allow Daw Aung San Suu Kyi to travel outside Yangon and to meet with members of the NLD outside her residence, by invoking security concerns. In an information sheet dated 12 August 1998, it is stated that the Government of Myanmar regretted that security conditions in Ayarwaddy Division made it unsafe for Daw Suu Kyi to travel there at that time but that the Government encouraged her to return home and continue her political activities in a more secure environment in Yangon. She and her companions remained free to return to their homes at any time or to stay by the roadside as long as conditions remained safe. Furthermore, Myanmar authorities reported in an information sheet dated 23 August 1998 that, to ensure the health and safety of Daw Aung San Suu Kyi and her companions, Daw Aung San Suu Kyi's personal physicians had been given full access to her at any time and the Government was continuing to provide an ambulance and a medical team on stand-by exclusively for their use. While Daw Aung San Suu Kyi and her companions continued their stay at Anyarsu village, food, water, clothing and other amenities had been made available by the Government as well as other private sources.

26. The Special Rapporteur welcomes the fact that on 18 and 24 August 1998, Secretary 1 of the State Peace and Development Council (SPDC) met with the Chairman of the NLD. The Special Rapporteur hopes that these recent meetings will lead to a genuine dialogue and will not be inconclusive, as was the case in July and September 1997.

C. Death in custody

27. The Special Rapporteur continues to receive reports indicating that torture and ill-treatment, including beatings, in prisons and interrogation centres continue to be a common practice. In addition, sanitary conditions are critical, and there is a lack of medical attention. Moreover, the authorities continue to refuse the International Committee of the Red cross (ICRC) access to prisons and places of detention. In these circumstances, the Special Rapporteur is not surprised to continue to receive information to the effect that several prisoners have died in prison, including several members or sympathizers of the NLD.

28. Since June 1996, several NLD members or sympathizers have died in jail as a result of torture and poor treatment.

29. In his report to the General Assembly (A/51/466, para. 77), the Special Rapporteur reported on the death in custody on 22 June 1996 of Mr. James Leander Nichols, who had been arrested in April 1996 for illegal possession of communications equipment (telephones and fax machines) and sentenced to three years imprisonment on 18 May 1996. He had allegedly been deprived of sleep during long interrogations prior to his death. Mr. Nichols was 65 years old and suffered from heart problems and diabetes. The Myanmar authorities, in a press statement issued on 16 July 1996, denied that he was tortured and stated that he died from natural causes, due to a stroke and a heart attack. However, the Special Rapporteur has recently received additional information from a former detainee who, in May 1996, was serving the final year of a seven-year prison sentence in Insein Prison in a cell close to the one where Mr. James Leander Nichols spent his last days. According to that prisoner, Mr. Nichols had been interrogated by officers for six consecutive days. Upon his arrival, he was reportedly forced to sit in a *Poun-San* position – i.e., to sit cross-legged on the floor with his hands on his knees, back straight and head bowed. During interrogation sessions he is said to have been forced to stand up for hours. Each time, he is said to have been taken away by officers with a hood over his head. Once he reportedly came back to his cell at Insein Prison with swollen legs and a puffed face after having been subjected to four days of interrogation. Despite the fact that he was suffering form acute dysentery and diabetes, he was allegedly not given either proper food or medicines. His health is believed to have quickly deteriorated. The last time he was reportedly seen by fellow inmates before being taken away by officers, he had swollen legs, could not walk properly, and was suffering from dysentery, vomiting and dizziness. It is not clear whether an autopsy was performed.

To date, authorities are thought not to have satisfactorily provided a full, written account of events leading up and surrounding his demise. Clearly, a full enquiry by an independent body is called for in light of the new evidence.

30. It is also reported that U Thein Tin, a member of the Yangon Township Organizing Committee of the NLD, died at Yangon General Hospital on 18 February 1998, following physical and mental torture in Insein Prison. U Thein Tin had been detained in Insein Prison since March 1996. He was charged under section 10(a) of the 1975 State Protection Law, which is designed to protect the country from the dangers of those who wish to harm it. A writer by profession, U Thein Tin was a former student leader during 1962–1963. He came to prominence during Daw San Suu Kyi's house-arrest for his unwavering commitment and management skills. He was well respected by both the leadership of the NLD and the youth wing of the party. The State Peace and Development Council (SPDC) claims that U Thein Tin died of blood cancer, according to a statement. However, other sources said that U Thein Tin had been tortured and his health had been deteriorating when he was finally admitted to hospital. He was already dying when he was taken to hospital, according to those sources, and the SPDC had long refused his requests for proper medical care. A Myanmar governmental spokesman confirmed that Thein Tin had died but denied that he had been poorly treated. He said Thein Tin had even been given a pardon three days before his death and released from his prison sentence because he had liver cancer. Medically, Thein Tin had been suffering from liver cirrhosis since 1982 and while he was serving his sentence on 3 December 1997, the prison medical authorities had transferred him to the Yangon hospital, according to the spokesman. He also said that Thein Tin's family had been allowed to pay him regular visits while he was in hospital.

31. Aung Kyaw Moe, 29 years old, a former student of Yangon Institute of Technology, who had been sentenced to 14 years imprisonment for his involvement in a December 1996 student demonstration, died in the prison hospital on 23 May 1998 after being beaten by prison authorities, following a hunger strike by political prisoners at the Thayawaddy Prison, 200 kilometres north of Yangon. On 22 May, political prisoners in Thayawaddy Prison staged a hunger strike to mark the eighth anniversary of the 1990 elections, in which the National League for Democracy (NLD) had won a landslide victory. The political prisoners made two demands: that the ruling State Peace and Development Council (SPDC) treat them as political prisoners, and that it enter into a dialogue with the NLD to solve the country's problems peacefully. However, the authorities, under instructions from the SPDC's Ministry of Home Affairs, rejected their demands and warned the prisoners to stop their hunger strike immediately. When they refused to do so, eight political prisoners were beaten and seriously injured. Afterwards, the family members of all the political prisoners at Thayawaddy Prison were forbidden to visit in an attempt by the authorities to prevent information about the incident from spreading.

32. The following two cases illustrate the severe physical and mental suffering reported to have been inflicted by prison officials to two former detainees:

(a) Thar Nyunt Oo, a leader of the student movement, was arrested in September 1990 and sentenced by the Special Military Court to five years imprisonment. He was detained at Insein Prison from September 1990 until November 1991. He was reportedly interrogated during the first two weeks, during which time he was confined to a small cell under continuous strong light, the intensity of which would be increased if he refused to answer a question. According to the information received, he was deprived of sleep for 60 or 70 hours at a time, beaten and kicked, and made to stand on his toes for hours at a time; meanwhile, his legs were kept in irons with manacles around his ankles and an iron bar between his legs. In 1991 Thar Nyunt Oo and other prisoners who had gone on strike were said to have been placed in solitary confinement and kept in leg irons. They were allegedly forced to stand with their upper bodies bent forward for up to thirty hours. They were reportedly prohibited from bathing for one month and were forced to cry and make admissions of guilt. Thar Nyunt Oo was transferred to Thayet Prison in November 1991 and then to Monywa Prison in December 1992. He was finally released in November 1994 and resumed his political activities. He was forced to flee to the border in December 1996;

(b) Aung Khaing, a graduate of Yangon Institute of Technology and resident of Prone Township, was arrested in November 1990 for his role in the pro-democracy movement and sentenced to 15 years imprisonment. His sentence was commuted to 10 years shortly after General Than Shwe was installed in 1992 as head of the State Law and Order Restoration Council (SLORC). Aung Khaing was released from prison in June 1998. During his eight years of detention in Insein Prison and Taungoo Prison in Pegu Division, Aung Khaing was reportedly subjected to severe beatings by prison warders, and as a result he developed psychological problems. Despite several requests from his family, the prison authorities refused to provide him with proper medical assistance; but instead, he was put in a solitary confinement cell that was designated for leper prisoners until his release in June 1998.

IV. Forced labour

33. The Special Rapporteur continues to receive numerous substantiated reports from a wide variety of sources indicating that the practice of forced labour remains widespread. The phenomenon of forced recruitment of civilians for the purpose of portering is reportedly still practised. Conditions for porters are described as brutal, with forced marches over mountains with heavy loads.

34. Since 1955, Myanmar has been a party to ILO Convention No. 29 concerning forced labour. Amendment or repeal of national legislation providing for the exaction of labour and services, under the threat of penalty, from residents who have not offered themselves voluntarily, has been called for by the ILO Committee of Experts for the Application of Conventions and Recommendations in comments regularly addressed to the Government since 1964.

35. Following the lodging of a representation in January 1993 by the International Confederation of Free Trade Unions, the ILO Governing Body urged the Government of Myanmar, in November 1994, to ensure that the relevant legislation, in particular, the Village Act and the Towns Act, would be brought into line with Convention No. 29, as had already been requested by the Committee of Experts, to ensure that the formal repeal of the power to impose compulsory labour be followed up in practice and to ensure that those resorting to coercion in the recruitment of labour be punished.

36. At the International Labour Conference in June 1996, the Committee on the Application of Standards noted the persistent failure of Myanmar to implement the Convention. The complainants alleged that the Government of Myanmar had demonstrated its unwillingness to act upon the repeated calls addressed to it by the supervisory bodies of the ILO to abolish forced labour in law and in practice and that, instead, the practice of forced labour was becoming more widespread and that the authorities in Myanmar were directly responsible for its increasing use.

37. At its two hundred sixty-eighth session, in March 1997, the ILO Governing Body decided to refer the complaint to a Commission of Inquiry chaired by Sir William Douglas (Barbados). The Commission's mandate was to consider whether, and to what extent, the alleged violations existed or had existed and to make any recommendations it deemed appropriate.

38. The Commission held its first meeting in June 1997 to establish its rules of procedure; it held formal hearings of witnesses in November 1997 in Geneva. In the course of its inquiry, during hearings in Geneva and during its visit to the region, the Commission received over 6,000 pages of documents and heard testimony given by representatives of a number of non-governmental organizations and by some 250 eyewitnesses with recent experience of forced labour practices.

39. The Government of Myanmar, which had been invited to take part in the proceedings, abstained from attending the hearings and did not authorize a visit by the Commission of Inquiry to Myanmar, arguing that such a visit would not contribute much towards resolving the case and would interfere in the internal affairs of the country.

40. The Myanmar authorities stated, in response to the initial complaint and supplementary evidence, that they were aware of the criticisms made by some worker delegates relating to use of forced labour in Myanmar and that a considerable portion of the criticisms relating to Myanmar were unfortunately based on biased and specious allegations made by expatriates living outside Myanmar who wished to denigrate the Myanmar authorities for their own ends.

41. According to the report issued by the Commission of Inquiry on 20 August 1998, the obligation to suppress the use of forced or compulsory labour was violated in Myanmar in national law as well as in actual practice in a widespread and systematic manner, with total disregard for the human dignity, safety and health and basic needs of the people. The Commission concluded that the impunity with which governmental officials, in particular, the military, treated the civilian population as an unlimited pool of unpaid forced labourers and servants at their disposal was part of a political system built on the use of force and intimidation to deny the people of Myanmar democracy and the rule of law. The Commission also concluded that any person who violated the prohibition of recourse to forced labour in international law bore an individual criminal responsibility.

42. The Commission's report relates "a saga" of untold misery and suffering, oppression and exploitation of large sections of the population inhabiting Myanmar by the Government, the military and other public officers. It is a story of gross denial of human rights to which the people of Myanmar have been subjected, particularly since 1988, and from which they find no escape except fleeing the country.

43. In its conclusions on the substance of the case, the Commission stated that there was abundant evidence before it of the pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military for portering; the construction, maintenance and servicing of military camps; the construction and

maintenance of roads, railways and bridges; other infrastructure work; other work in support of the military; and work in agriculture, logging and other projects undertaken by the authorities or the military, sometimes for the profit of private individuals.

44. The Commission also stated that in actual practice, the manifold exactions of forced labour often gave rise to the extortion of money in exchange for a temporary alleviation of the burden but also to threats to the life and security and extrajudicial punishment of those unwilling, slow or unable to comply with a demand for forced labour. Such punishment or reprisals ranged from demands for money to physical abuse, beatings, torture, rape and murder.

45. Forced labour in Myanmar was widely performed by women, children and elderly persons, according to the Commission's conclusions, and by other persons otherwise unfit for work, and was almost never remunerated.

46. Porters, including women, were often sent ahead in particularly dangerous locations, such as in suspected minefields, and many were killed or injured that way, the Commission stated. Porters were rarely given medical treatment of any kind, and some of the sick or injured were left behind in the jungle.

47. Similarly, on road-building projects, injuries were in most cases not treated, and deaths from sickness and accidents were frequent on some projects, the Commission stated.

48. Forced labourers, including those sick or injured, were frequently beaten or otherwise physically abused by soldiers, resulting in serious injuries; some were killed, and women performing compulsory labour were raped or otherwise sexually abused by soldiers.

49. In conclusion on the subject of forced labour, the Special Rapporteur wishes to make two observations. First, the proceedings and report of the Commission of Inquiry of the ILO clearly indicate that the attitude of the regime in Myanmar towards the Commission was the same as that which the regime had adopted towards the Special Rapporteur, the Commission on Human Rights and the General Assembly – that is to say, an attitude of total non-cooperation, in violation of the obligations that Myanmar had freely undertaken under the Charter of the United Nations and relevant ILO Conventions. Secondly, the conclusions of the Commission of Inquiry of the ILO confirm all the serious concerns that the Special Rapporteur has highlighted in his reports to the General Assembly and the Commission on Human Rights concerning the laws on and the practice of forced labour in Myanmar.[c]

V. Minorities

50. Since independence from British colonial rule in 1948, Myanmar has witnessed unresolved conflicts between some of the 135 ethnic minorities of the country and the central authorities. These conflicts have given rise to insurgencies in several parts of the country which have resulted in large numbers of internally displaced persons and refugees in neighbouring countries. In connection with these conflicts, the Special Rapporteur continues to receive detailed reports on human rights violations committed by members of the armed forces (Tatmadaw). Two examples among many others may be cited:

(a) On 27 June 1998, 13 villagers, including two women and seven children, were reportedly killed by about 120-130 troops of the State Police and Development Council led by commander Htun Nyein. The troops were patrolling and searching deserted villages in the countryside of Murng-Nai when they found the people at a farm 4 miles west of their village of Nawng Tao, Kaeng Tawng tract. The villagers killed belonged to the same extended family;

(b) On 29 June 1998, the same troops are reported to have beaten to death a man named Sai Phim who was weeding his farm at the deserted village of Nar Sarn, west of Nawng Phar, Kaeng Tawng. They buried his body in the ground at the foot of the steps of his farm hut, leaving his head above the ground.

51. Information received by the Special Rapporteur indicates that sexual violence against women, including rape, is frequently committed by members of the Tatmadaw with impunity. The victims are civilians, often ethnic minority women and girls, and the perpetrators are reported to come from all ranks within the Tatmadaw hierarchy. One example of this kind of violence involved a 14-year-old girl, who is reported to have been raped and burned alive at a farm about 3-4 miles east of Lai-Kha on 11 May 1998. The girl, named Nang Zarm Hawm, was the daughter of Loong Parn and Pa Poo from Nawng Zem village, who had been forced to move to Lai-Kha town in October 1997. On that day, Nang Zarm Hawm had gone with her parents to work at their rice farm, about 3 miles east of the town. They ran out of the paddy seeds which they were sowing, so Loong Parn and Pa Poo went back to town to get more paddy seeds, leaving their daughter at the farm hut. At that time, Maj Myint Than and 85-90 troops, who were patrolling the outskirts of the town, came to the farm and saw Nang Zarm Hawm alone in the hut. Myint Than asked her about her parents and ordered his soldiers to wait at the edge of the farm and arrest anyone who came to the farm. He then raped

Nang Zarm Hawm in the hut several times during the day and at about 4 a.m. burned Nang Zarm Hawm in the hut, and left the place with his troops.

52. Hundreds of thousands of persons have been forcibly relocated, without any compensation or assistance, to new towns, villages or relocation camps in which they are essentially detained. Forced relocations are currently being implemented on a wide scale in eastern Myanmar, in Shan Sate, Karenni and Karen areas. One report indicates that on 4 June 1998, Golden Triangle Military Commander Major General Thein Sein (Chairman of the Eastern Shan State Peace and Development Council) ordered Major Hla Htwe to confiscate 13 plots of land and rice fields owned by villagers of King-Ka in zone 2 of Kaeng-Tung, for the purpose of expanding the SPDC military base there. The military would provide each household with a plot of land at a different place big enough to build a small house. But the villagers would have to buy them at the price of K 10,000 each plus an extra K 1,000 for a land survey fee. Furthermore, the same villagers were forced to grow crops for the military on the land that had been forcibly taken from them.

53. Forced conscription of civilians into compulsory labour for the military authorities, including the practice of forced recruitment of porters, is also one of the reasons that people were leaving their homes. The practice disrupts family life and precludes persons from carrying on their daily work in order to earn a living. Reports indicate that from time to time, SPDC troops in Kun-Hing have been forcing children of the villagers to do menial work in the military bases, 10-15 boys at a time, ages ranging mostly from 14 to 16. On 20 May 1998, children were forced to work on certain military bases fetching water, washing dishes, weeding grass in the military compounds, sweeping and cleaning trenches, feeding pigs, feeding chickens and ducks, washing and dusting cars and other vehicles, and feeding dogs. When the children were tired, the soldiers would scold them and beat them with sticks. Some parents tried to go to work in the place of their children, but the soldiers would not allow it. The children had to bring their own food for the midday meal, but the soldiers either ate or stole their food.

54. As a result of the internal armed conflict, abuses and human rights violations, many people have fled to neighbouring countries. It is reported that the Thai border is home to more than 100,000 refugees, mainly Karen, Karenni and Shan. The Bangladesh border is home to 20,000 refugees from Rakhine state. The Special Rapporteur is aware that, since 1995, the refugee camps along the Thai border have been prone to attacks by troops allegedly supported by the Tatmadaw. It is further reported that in March of this year, another series of attacks occurred in the camps located along the Thai/Myanmar border. Although UNHCR is present in Rakhine state and in Cox's Bazar (Bangladesh), the Special Rapporteur hopes that UNHCR will soon finalize an agreement with the Government of Thailand regarding a presence on the Thai/Myanmar border.

VI. Conclusions and recommendations

A. Conclusions

55. The Special Rapporteur has to state with regret that the Government of Myanmar has so far ignored the resolutions of both the General Assembly and the Commission on Human Rights. It has also displayed a total lack of cooperation with the Special Rapporteur and has not so far, more than two years after his appointment, found an appropriate time for him to visit the country.

56. The situation in Myanmar has not evolved in any favourable way since the submission of the report of the Special Rapporteur to the Commission on Human Rights at its fifty-fourth session. The conclusions drawn in paragraphs 68-76 of that report (E/CN.4/1998/70) unfortunately remain valid.

57. Although the Special Rapporteur had hoped that a dialogue would finally begin between the Government and the National League for Democracy, including leaders of minorities, his hopes have not been fulfilled. The result is that the structure of power under the military regime remains autocratic and accountable only to itself and rests on the denial and repression of most fundamental rights.

58. The Special Rapporteur remains deeply concerned about the continued harassment of political leaders and the detention of many political prisoners. He is also seriously concerned about the virtual blockade of the General-Secretary of the NLD in her compound, about her continued vilification and the inability of her party to organize normal political meetings and functions.

59. The Special Rapporteur is deeply concerned about the serious human rights violations that continue to be committed by the armed forces in the ethnic minority areas. The violations include extrajudicial and arbitrary executions (not sparing women and children), rape, torture, inhuman treatment, forced labour and denial of freedom of movement. These violations have been so numerous and consistent over the past years as to suggest that they are not simply isolated or the acts of individual misbehaviour by middle- and lower-

rank officers but are rather the result of policy at the highest level, entailing political and legal responsibility.

B. Recommendations

60. Given the refusal of the Government of Myanmar to give effect to the resolutions of both the General Assembly and the Commission on Human Rights, the Special Rapporteur feels constrained to repeat the recommendations made in paragraphs 77-97 of his report to the Commission on Human Rights earlier this year (E/CN.4/1998/70).

61. Further, the Special Rapporteur recommends that an independent inquiry be held into the circumstances of the deaths of Mr. Nichols in June 1996 and of U Thein in February 1998, while detained in Insein Prison, in the light of any evidence that may be gathered from fellow prisoners and prison officials and, indeed any other persons, so that action may be taken against the individuals who may have been responsible for their deaths or harsh treatment.

62. Urgent steps should be taken by all governmental authorities to put a stop, once and for all, to forced labour and portering and to comply fully with the obligations of Myanmar under ILO Convention No. 29.

63. The Government of Myanmar should, with the least possible delay, implement the recommendations that the Commission of Inquiry of the ILO recently made.

Notes

[a] A/47/651, A/48/578, A/49/594 and Add.1, A/50/568, A/51/466 and A/52/484.

[b] E/CN.4/1993/37, E/CN.4/1994/57, E/CN.4/1995/65 and Corr.1, E/CN.4/1996/65, E/CN.4/1997/64 and E/CN.4/1998/63.

[c] A/51/466, paras. 126-145; E/CN.4/1997/64, paras. 80-81, 108 (13) and (14); A/52/484, paras. 50-68, 152 (j) and (k); E/CN.4/1998/70, para. 88.